

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

THE CITY OF SPRINGFIELD, MISSOURI, )  
)  
Plaintiff, )  
)  
vs. )  
)  
UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
LISA P. JACKSON, ADMINISTRATOR, U.S. )  
ENVIRONMENTAL PROTECTION )  
AGENCY, and )  
)  
KARL BROOKS, REGIONAL )  
ADMINISTRATOR, REGION 7, U.S. )  
ENVIRONMENTAL PROTECTION )  
AGENCY, )  
)  
Defendants. )  
)

Case No. 6:11-CV-03383-RED

**JOINT REPORT, LITIGATION PLAN AND STATUS**

Pursuant to this Court’s Notice of Pretrial Procedures of December 18, 2012, the Parties to the above-captioned action, through their undersigned counsel, hereby submit the instant Report and Litigation Plan. At the outset, the Parties believe that an agreement between the Parties is likely within the next week. In that event, and assuming Court approval as necessary, implementation of the Scheduling Order will be unnecessary.

**INTRODUCTION**

In this action Plaintiff the City of Springfield, Missouri challenges the United States Environmental Protection Agency’s (“EPA”) establishment of Total Maximum

Daily Loads (“TMDLs”) for Wilson and Jordan Creeks and separately for Pearson Creek in and near Springfield. Specifically Springfield challenges EPA’s actions on the basis of alleged (1) lack of statutory authority, (2) arbitrary and capricious action and (3) violation of requirements for notice and comment rulemaking. The Defendants answered on December 17, 2012, and have denied the substance of the Plaintiff’s challenges to the TMDLs.

The Parties began on their own volition discussions toward a possible settlement shortly after the September 30, 2011 Complaint. EPA currently intends to file a motion for voluntary remand of the challenged TMDLs, but has not yet obtained the necessary approvals for such a motion. Plaintiff anticipates that it may not oppose such a motion. Because EPA is not yet in a position to file such a motion, the Parties have conferred, and offer this Joint Report and Plan and the accompanying draft Scheduling Order to the Court. However, the Parties request the Court to withhold action on the draft Scheduling Order for seven (7) days, to allow EPA time to finalize and file a motion for voluntary remand, which if granted will resolve this case.

## **JOINT PLAN**

### **I. Nature of the Action**

The Parties agree that the Plaintiff’s claims are governed by the Administrative Procedures Act (“APA”) and as such this Court’s review of the challenged EPA action is to be conducted on the record of the administrative proceedings before the agency. Plaintiff requests that EPA be required to submit the administrative record by February 28, 2013. EPA objects and wishes to submit the record, to the extent necessary, after the Court’s decision on Plaintiff’s Motion for Judgment on the Pleadings.

This action is exempted from initial disclosures and conference of the Parties under R. 26 and Local R. 26.1 because it is an APA action.

The Parties do not anticipate any Joinder of parties or Protective Orders.

Because this is an APA action, no trial is necessary. The parties anticipate a hearing on the merits requiring one half day of oral argument.

## **II. Discovery**

Because this is an APA action, traditional discovery, including initial disclosures, is unnecessary. Any discovery that a Party might seek with leave of Court would be pursuant to the schedule for non-dispositive motions.

## **III. Dispositive Motions**

The Plaintiff filed on January 8, 2013 its Motion for Judgment on the Pleadings, R. 12(c), addressing statutory authority claims, and Plaintiff requests that the Defendants be required to respond on the schedule noted in the draft Scheduling Order. EPA objects and wishes to respond by a later date.

The Parties have further discussed additional dispositive motions, and they agree that the case, if the Court's ruling on the 12(c) Motion does not decide the case, will likely be decided on the Plaintiff's Motion for Summary Judgment and the Defendants' Responses thereto and Cross Motion. Accordingly, the draft Scheduling Order includes an agreed-upon schedule for dispositive motions and memoranda in support, for this Court's consideration.

Respectfully submitted,

Dated: February 6, 2013

By: s/Richard H. Sedgley

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of February, 2013, I electronically filed the foregoing and the draft Scheduling Order with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to counsel of record.

*s/Richard H. Sedgley* \_\_\_\_\_

Counsel



5. Plaintiff's Motion for Summary Judgment shall be filed not later than 60 days after the Court's decision on Plaintiff's January 8, 2013 Motion for Judgment on the Pleadings.
6. Defendants' Opposition and Cross Motion for Summary Judgment shall be due not later than 21 days after the date provided for Plaintiff's Motion for Summary Judgment pursuant to paragraph five above.
7. Plaintiff's Reply and Opposition to EPA's Motion shall be due not later than 21 days after the date specified in paragraph six above.
8. Defendants' Reply shall be due not later than 14 days after the date specified in paragraph seven above.
9. Hearing on the Parties' Motions for Summary Judgment shall be scheduled by the Clerk, after consultation with counsel, not earlier than 30 days after the date specified in paragraph eight above.

It is so ORDERED.

\_\_\_\_\_  
\_\_\_\_\_

Judge

Dated: \_\_\_\_\_, 2013